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| APPLICATION NO. | FILING DATE | FIRST NAMED INVENTOR | ATTORNEY DOCKET NO. | CONFIRMATION NO. |
|-----------------|-------------|----------------------|---------------------|------------------|
| 10/675,324 | 09/29/2003 | David Cormier | 480032-354 | 5291 |

7590 01/11/2005

Fulwider Patton Lee & Utecht LLP
Atten: Alan C. Rose
Howard Hughes Center, Tenth Floor
6060 Center Drive
Los Angeles, CA 90045

EXAMINER

ALI, SHUMAYA B

ART UNIT PAPER NUMBER

3743

DATE MAILED: 01/11/2005

Please find below and/or attached an Office communication concerning this application or proceeding.

| | | | |
|------------------------------|--------------------------------------|---------------------------------------|--|
| Office Action Summary | Application No. 10/675,324 | Applicant(s) CORMIER ET AL. | |
| | Examiner Shumaya B. Ali | Art Unit 3743 | |

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --
Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 29 September 2003.
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 1-23 is/are pending in the application.
- 4a) Of the above claim(s) _____ is/are withdrawn from consideration.
- 5) ☒ Claim(s) 1-19 is/are allowed.
- 6) ☒ Claim(s) 20-23 is/are rejected.
- 7) ☐ Claim(s) _____ is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☒ The drawing(s) filed on 29 September 2003 is/are: a) ☒ accepted or b) ☐ objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
a) ☐ All b) ☐ Some * c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
 2. ☐ Certified copies of the priority documents have been received in Application No. _____.
 3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).
- * See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- | | |
|---|---|
| 1) <input checked="" type="checkbox"/> Notice of References Cited (PTO-892) | 4) <input type="checkbox"/> Interview Summary (PTO-413) Paper No(s)/Mail Date. _____ |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948) | 5) <input type="checkbox"/> Notice of Informal Patent Application (PTO-152) |
| 3) <input checked="" type="checkbox"/> Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08) Paper No(s)/Mail Date _____ | 6) <input checked="" type="checkbox"/> Other: <u>detailed action</u> . |

DETAILED ACTION

Claim Rejections - 35 USC § 102

1. The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

***Claims 20-23 are rejected under 35 U.S.C. 102(b) as being anticipated by Bledsoe US Patent
4,817,588***

2. As to claim 20, Bledsoe disclose an adjustable stop ergonomic knee brace comprising'. first (see fig.2A reference object 20) and second (see fig.2A reference object 22) struts extending along the leg above and below the knee (see col.3 lines 47-50); a pivot assembly (hinge mechanism) (see fig.2A reference object 24, col.3 lines 53-64) intercoupling the first and second struts for pivotally mounting said struts about a central pivot point (point where the struts and the locking disk is connected by rivet 178, see fig.13A col.16 lines36-40), said pivot assembly having an outer periphery (see fig.6 reference object 165 and periphery containing depression 240 in fig.7); a stop (col.5 lines 50-54) for limiting relative angular movement of said struts', a push button (see fig.10 reference object 210) associated with said stop, said push button being mounted adjacent the periphery of the pivot assembly, for movement toward said pivot point to release the stop and permit angular adjustment of the stop (see col.17 lines 67-68 and col.18 lines 1-15); and said push button being normally biased (see fig.10 reference object 216, col.6 lines 14-28) outward away from the pivot point.

Claim Rejections - 35 USC § 103

3. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

Claims 21-23 are rejected under 35 U.S.C. 103(a) as being unpatentable over Bledsoe US Patent 4,817,588 in view of Kilbey US Patent 5,814,000

4. **As to claim 21, Bledsoe does not disclose** an adjustable stop ergonomic knee brace as defined in claim 20 wherein said pivot assembly has angular indicia thereon, and said stop has an indicator movable with said stop, said indicator overlying said angular indicia.

5. **As to claim 21, Kilbey teaches** an adjustable flexion-extension hinge for hinged limb immobilizer comprising a pivot assembly with angular indicia (see fig.9 reference object 20); a stop (see fig.9 reference object 68) with an indicator (see fig.9 reference object 66) movable with said stop; said indicator overlying said indicia (fig.9 reference object 66 is in a form of a slot that overlies the said indicia).

6. Therefore, it would have been obvious to one of ordinary skill in the art at the time of the invention to modify the adjustable stop of Bledsoe in view of Kilbey in order to provide the stop with indicia to be viewed through the grooved/curved surfaces (see fig.13 reference object 162) and an indicator (grooved surfaces) overlying the angular indicia for the purposes of ensuring and viewing the degrees of extension and flexion being adjusted by the user.

7. **As to claim 22, Bledsoe does not disclose** an adjustable stop ergonomic knee brace as defined in claim 20 wherein indicia and indicators are provided for both flexion and extension stops, and wherein

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the push button and indicia for the flexion stop and indicia are of one color and the push button and indicia for the extension stop are of another color.

8. **As to claim 22, Kilbey teaches** an adjustable stop ergonomic knee brace as defined in claim 20 wherein indicia and indicators are provided for both flexion and extension stops, and wherein the push button and indicia for the flexion stop and indicia are of one color and the push button and indicia for the extension stop are of another color (see col.3 lines 65-68 and col.4 lines 1-4).

9. Therefore, it would have been obvious to one of ordinary skill in the art at the time of the invention to modify stop assembly of Bledsoe in view of Kilbey in order to provide the flexion and extension stops, the push button and indicia for the flexion stop and indicia with one color and the push button and indicia for the extension stop with another color for the purposes of distinguishing between the extension and flexion stops.

10. **As to claim 23, Bledsoe disclose** an adjustable stop ergonomic knee brace as defined in claim 20 wherein the outermost surfaces of said push buttons is provided with a non-slip configuration.

11. **As to claim 23, Kilbey teaches** an adjustable stop ergonomic knee brace as defined in claim 20 wherein the outermost surfaces of said push buttons is provided with a non-slip configuration (see col.4 lines 10-13).

12. Therefore, it would have been obvious to one of ordinary skill in the art at the time of the invention to modify the outermost surfaces of the push button of Bledsoe in view of Kilbey in order to provide the push button with a non-slip configuration for the purposes of easy grasping of the button.

Allowable Subject Matter

Claims 1-19 are allowed.

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13. The following is an examiner's statement of reasons for allowance: As to claims 1-19, the prior art of record teaches a movable stop pivoted at the center of the assembly and having an outwardly biased locking member for engaging said stop recesses, coupled to a release button which extends radially outward to the periphery of said pivoting arrangements; however does not teach nor render obvious the overall claimed combination of the release button being movable inward to shift said locking member out of said stop recesses to permit angular adjustment of said stop.

14. Therefore, the invention defined in claims 1-19 are novel.

15. Any comments considered necessary by applicant must be submitted no later than the payment of the issue fee and, to avoid processing delays, should preferably accompany the issue fee. Such submissions should be clearly labeled "Comments on Statement of Reasons for Allowance."

Conclusion

16. The prior art made of record on form PTO-892 and not relied upon shows the state of the art.

17. Any inquiry concerning this communication or earlier communications from the examiner should be directed to **Shumaya B. Ali** whose telephone number is **571-272-6088**. The examiner can normally be reached on M-F 8:30 am-4: 30 pm.

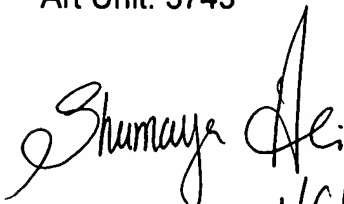
18. If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, **Henry Bennett** can be reached on **571-272-4791**. The fax phone number for the organization where this application or proceeding is assigned is 571-273-6088.

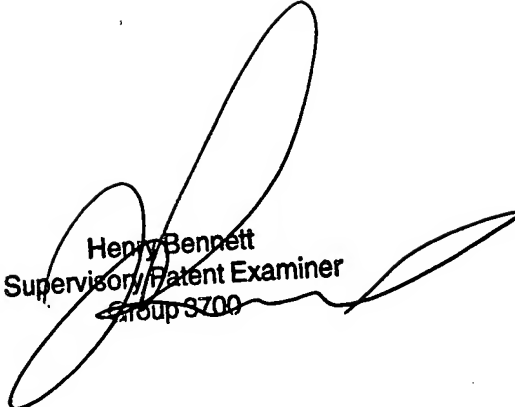
Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).

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Shumaya B. Ali
Examiner
Art Unit 3743
1/6/05


Henry Bennett
Supervisory Patent Examiner
Group 3700